

SERVICE DATE – DECEMBER 28, 2015

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 6 (Sub-No. 306X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—
BETWEEN FORT COLLINS AND LAPORTE, IN LARIMER COUNTY, COLO.

Decided: December 22, 2015

The predecessor of BNSF Railway Company (BNSF), the Burlington Northern Railroad Company, filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon 4.0 miles of rail line between milepost 75.00 near Fort Collins and milepost 79.00 near LaPorte, in Larimer County, Colo. Notice of the exemption was served and published in the Federal Register on December 23, 1988 (53 Fed. Reg. 51,936). The exemption became effective on January 21, 1989.

By decision and notice of interim trail use or abandonment (NITU) served on January 19, 1989, the proceeding was reopened and the Board's predecessor, the Interstate Commerce Commission, authorized a 180-day period for the City of Fort Collins (the City) to negotiate an interim trail use/rail banking agreement with BNSF for the right-of-way involved in this proceeding pursuant to § 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29.

In a petition filed on September 15, 2015, the City states that on July 13, 1989, the City and BNSF entered into an Offer to Purchase and Interim Trail Use/Rail Banking Agreement (Railbanking Agreement). On May 15, 1990, the City and BNSF entered into a First Amendment to Offer to Purchase and Interim Trail Use/Rail Banking Agreement. The City states that under the Railbanking Agreement, the City agreed to purchase, and BNSF agreed to convey by a quitclaim deed, all of BNSF's right, title and interest in only a 2.83-mile portion of the line between milepost 75.00 and milepost 77.83. BNSF reserved from the conveyance mineral rights, a communications easement, and a right of first refusal. The City did not assume any responsibility for the remaining 1.17-mile portion of the line between milepost 77.83 and milepost 79.00.

In its petition, the City states that it no longer requires the portion of the line between milepost 75.82 and milepost 76.61, and requests that the Board modify and partially vacate that portion of the NITU and issue a replacement to apply only to the portions of the line between milepost 75.00 and 75.82 and between milepost 76.61 and milepost 77.83. In a response filed on October 27, 2015, BNSF states that it does not object to modification of the NITU.

The City has complied with the requirements of 49 C.F.R. § 1152.29(d)(2) regarding a request to modify a NITU for a portion of the right-of-way. Therefore, this proceeding will be

reopened and a replacement NITU will be issued for the portions of the line between milepost 75.00 and 75.82 and between milepost 76.61 and milepost 77.83. BNSF may fully abandon the remaining portion of the line between milepost 75.82 and milepost 76.61, and must notify the Board of the date of consummation.¹

It is ordered:

1. This proceeding is reopened.
2. The NITU served in this proceeding on July 19, 1989, is vacated.
3. A replacement NITU applicable to the City for the portions of the line between milepost 75.00 and milepost 75.82 and between milepost 76.61 and milepost 77.83 is issued.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the sponsor's continuing to meet the financial obligation for the right of way.
5. If the trail sponsor intends to terminate trail use, it must send the Board a copy of this decision and notice and request and it be vacated on a specified date.
6. BNSF may fully abandon the remaining portion of the line between milepost 75.82 and 76.61.
7. This decision and notice is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

¹ BNSF is reminded that it has 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier (here, the NITU) to consummate the abandonment of the portion of the line between milepost 75.82 and milepost 76.61. 49 C.F.R. § 1152.29(e)(2).